

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARVEL CHARACTERS, INC.,

Plaintiff,

v.

PATRICK S. DITKO, in his capacity as  
Administrator of the Estate of Stephen J.  
Ditko,

Defendant.

Case No.: 1:21-cv-07957-LAK

Hon. Lewis A. Kaplan

**DECLARATION OF MARC TOBEROFF  
IN SUPPORT OF PATRICK S. DITKO'S  
OPPOSITION TO PLAINTIFF'S  
MOTION TO EXCLUDE THE EXPERT  
REPORTS AND TESTIMONY OF  
MARK EVANIER**

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PATRICK S. DITKO, in his capacity as  
Administrator of the Estate of Stephen J.  
Ditko,

Counterclaimant,

v.

MARVEL CHARACTERS, INC. and DOES  
1-10, inclusive,

Counterclaim-Defendants.

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I, Marc Toberoff, declare as follows:

1. I am counsel for Defendant Patrick S. Ditko (“Defendant”) and a member of the Bar of this Court. I submit this declaration support of Defendant’s opposition to Plaintiff Marvel Characters. Inc.’s motion to exclude the expert reports and testimony of Mark Evanier based on my personal knowledge and review of the documents referenced herein. If called and sworn as a witness, I could and would testify competently thereto.

2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the order dated July 8, 2009, in *Siegel v. Warner Bros. Ent. Inc.*, Case No. 04-CV-08400, Docket No. 554, in the U.S. District Court for the Central District of California.

3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the trial transcript in *In re Marvel Entertainment Group, Inc., et al.*, No. 97-638-RMM (D. Del.).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and was executed on May 24, 2023, in Malibu, California.

By: /s/ Marc Toberoff  
Marc Toberoff